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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

VERBATIM RECORD OF THE 374th MEETING

Held at Headquarters, New York,
on Monday, 22 June 1992, at 3 p.m.

Chairman: Mr. HOHENFELLNER (Austria)

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK

The CHAIRMAN: It is the Chair's intention to begin our consideration of agenda item 10, "Spin-off benefits of space technology: review of current status", as soon as possible - possibly tomorrow afternoon - after we have completed our consideration of agenda item 8. Therefore, I again ask delegations wishing to speak on agenda item 10 to inscribe their names on the list of speakers as soon as possible.

REPORT OF THE LEGAL SUBCOMMITTEE ON THE WORK OF ITS THIRTY-FIRST SESSION (A/AC.105/514) (continued)

Mr. ZAWELS (Argentina) (interpretation from Spanish): Just a few weeks ago in Geneva the report of the Legal Subcommittee on the work of its thirty-first session (A/AC.105/514) was adopted. The document bears eloquent testimony to the intensive, fruitful and cordial session, which was held under the expert chairmanship of Ambassador Vaclav Mikulka. The Argentine delegation reiterates the importance it attaches to the overall objective of the Legal Subcommittee: the progressive development of space law. We also believe that that development of international law should promote international cooperation, the development of research and the preservation of the peaceful nature of the exploration and utilization of outer space, taking into account the interests of all countries, particularly those that are relatively less developed in space matters.

The Working Group on the elaboration of draft principles relevant to the use of nuclear power sources in outer space worked intensively with the aim of finalizing the adoption of the principles. In this context, we should like to highlight the working paper (A/AC.105/C.2/L.154/Rev.11) submitted by the delegations of Canada and Germany, which my delegation supports and which should constitute the final basis of a consensus agreement. I repeat that the

(Mr. Zawels, Argentina)

current session gives an important opportunity to achieve that objective, which would be of real benefit to the whole international community.

The Working Group on the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and the interests of all States, taking into particular account the needs of developing countries, held its first substantive session under the able chairmanship of Mr. Raimundo Gonzalez. Its deliberations were based on the working paper submitted by a number of countries, including Argentina, on principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes.

The discussion on that reference paper was frank and constructive. The assessment and reaction of other delegations are now clear to the sponsors. In many cases there were misunderstandings which I believe must now have been cleared up. This will undoubtedly be reflected in a new, revised, version of the paper, which will be ready for the next session of the Legal Subcommittee.

In this context, we share the view expressed today by the delegation of Germany, that it is important to reflect in the consideration of this item the important experience of bilateral and regional space cooperation, which has been going on for some years and from which my country has benefited and continues to benefit. It is also necessary to be clear that international cooperation is not a compulsory activity, but results from the voluntary decision of States.

The Working Group on the definition and delimitation of the geostationary orbit also experienced intensive activity in its debates. The working paper (A/AC.105/C.2/L.189) submitted by the delegation of the Russian Federation on

(Mr. Zawels, Argentina)

questions concerning the legal regime for aerospace objects undoubtedly contributed to that. The paper highlighted a number of questions on aerospace objects which not only led to a positive and rich exchange of opinions but also prompts further consideration of the subject and a closer study of existing information on it.

Today we heard a very interesting and stimulating statement by the Colombian delegation, which we thank for its efforts and hard work in clarifying and promoting the study of this complex issue.

The Subcommittee examined the informal working paper submitted by a group of countries belonging to the Group of 77. Proposals were made, and they will be reflected in a revision of that paper, which is now being prepared by the delegations concerned.

My delegation supports the consideration of this item and the need to elaborate a separate legal regime on the geostationary orbit. We believe that many aspects need to be dealt with, including, as a priority, the subject of space debris in that orbit.

(Mr. Zawels, Argentina)

Lastly, I should like to emphasize once again the positive atmosphere that prevailed during the session of the Legal Subcommittee at Geneva. That facilitated dialogue among the delegations and the search for common ground for our work. Space cooperation must begin in the Committee on the Peaceful Uses of Outer Space and in the search for common norms that will promote the exploration and utilization of outer space while safeguarding the possibility for the relatively less-developed countries to participate, in the nearest possible future, in this exciting adventure of mankind.

Mr. RASHKOW (United States of America): I appreciate the opportunity to address the Committee under item 8 of its agenda concerning the report of the Legal Subcommittee.

Allow me first to turn to the Subcommittee's work on the use of nuclear power sources in outer space. As we are all aware, the Committee has been engaged over the past 12 years in an effort to develop a set of principles that are balanced, place a high priority on safety and are realistic from a technical point of view. The United States has from the outset fully supported the Committee's activities and efforts in this regard. As the United States has urged throughout all of our deliberations on this important subject, the Subcommittee should endeavour to ensure that the highest scientific and technical standards are met in every one of the recommendations that it is developing.

As members know, the delegation of the United States has proposed certain clarifications and modifications in draft Principle 3 in order to enhance the utility of the principles through improvements to their scientific and technical underpinnings. My delegation is disappointed in the concerns that some delegations have expressed about the impact of our proposals on the effort to complete these principles.

(Mr. Rashkow, United States)

Let no member of the Committee mistake the commitment of the United States to the prompt completion of these principles. As a country with a large population and a vast land mass, the United States places the highest priority on the safe use of nuclear power sources in outer space by all countries. The enormous research and development conducted by the United States in this area clearly reflect this commitment.

The United States has proposed clarifications and modifications in draft Principle 3 because it takes the Committee's work in this area seriously and because it believes that the concerns it has identified are sufficiently important to require the proposed changes before the principles are submitted to the General Assembly.

My country was grateful for the consideration given by other delegations to our proposals in the Scientific and Technical and Legal Subcommittees and for the constructive efforts to bring proposals to address the technical concerns identified by the United States. My delegation welcomed the considerable progress that was made in this regard at the last session of the Legal Subcommittee, under the very able leadership of Mr. Franz Cede, Chairman of the Working Group on this subject. While these efforts have brought us close to the completion of these important principles, more remains to be done to make these draft principles more technically accurate and realistic.

My delegation is working actively with other delegations to build on the progress already made and to make further progress during this session of the Committee. In this regard I want to underscore the intention of my Government to work with other delegations in order to bring the negotiation of the full set of principles to a prompt and satisfactory conclusion.

(Mr. Rashkow, United States)

I now turn to the Subcommittee's item entitled "Consideration of the legal aspects related to the application of the principle that exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries". As members are all aware, this item reflects a carefully balanced formulation that was intended to lay the groundwork for discussion over the next few years on the application of article I of the 1967 Treaty on outer space. In this regard my delegation notes that the new item provides only for an exchange of views on this important matter. It does not provide a mandate for negotiation of a new international regime.

The early work of the Committee on this item has focused on the collection of information from Member States regarding their national legal framework, as appropriate, relating to the application of the principle contained in article 1 of the 1967 outer space Treaty and regarding international agreements concluded by Member States that are relevant to that principle. At the last session of the Subcommittee the Chairman of the Working Group on this item presented a paper summarizing in an analytical manner the information and views provided by Member States. In the view of our delegation that paper constitutes an important contribution to the work of the Subcommittee on this subject and should be the focus of our work for the next sessions.

I now turn to the remaining item on the Subcommittee's agenda, the definition and delimitation of outer space and the character and utilization of the geostationary orbit. My delegation would like briefly to restate its well-known views on this subject.

The absence of a definition or delimitation of outer space, as we are all aware, has not placed practical barriers in the way of the dramatic progress

(Mr. Rashkow, United States)

that has been made in the peaceful exploration and utilization of outer space over the past 30 years. The continued absence of such a definition or delimitation does not, to our knowledge, pose any obstacles to further dramatic progress for the foreseeable future. Quite to the contrary. As we have consistently emphasized throughout the discussion on this subject, premature attempts to establish such a definition or delimitation may in fact complicate, if not impede, further progress in the peaceful exploration and utilization of outer space.

Turning to the geostationary orbit, we share the view that it is an integral part of outer space. It is not subject to appropriation by claims of sovereignty, by means of use or occupation or by other means. All States enjoy equitable access to its utilization. Moreover, questions relating to the utilization of the geostationary orbit are being addressed effectively in the International Telecommunication Union (ITU). The ITU is responsible, on the basis of treaty arrangements, for the rational, efficient and equitable use of the orbit. In our view the development of a new legal regime is, therefore, unnecessary.

My delegation has detected in recent discussions of the Subcommittee the possibility in the future of a convergence of views on this item. For its part, my country would welcome any convergence of views that rests firmly on respect for the basic tenets of the outer space Treaty of 1967 and on respect for the mandate and activities of the International Telecommunication Union in regard to the rational, efficient and equitable use of the orbit.

(Mr. Rashkow, United States)

Before concluding, my delegation wishes to comment briefly on the progress the Legal Subcommittee has made in improving the methods of its work. At the last session, the Subcommittee agreed to a series of measures intended to enhance its utilization of conference services. We believe that this is a step in the right direction, and we look forward to doing more in the future.

Mr. TETU (Canada): This Committee and its two Subcommittees have been labouring for many years to elaborate a set of international principles governing the use of nuclear power sources (NPS) in outer space. Our objective throughout these years has been to protect the general public from harm caused by satellites containing NPS, should they return to Earth.

Despite their invisibility to the general public, nuclear power sources in outer space, especially in low-Earth orbit, have been a very real presence with a certain risk for quite a few years. Although scientists, engineers and technicians involved in their construction and use have considered them safe, there have been accidents, including the dispersal into the upper atmosphere of large amounts of plutonium 238 as a result of the launch abort of SNAP 9A in April 1964 and the scattering of radioactive debris, some of it highly lethal, over northern Canada in 1978 owing to the re-boost failure of Cosmos 954.

We understand that for the most part we are free of low-Earth orbiting nuclear-powered satellites. However, plans are in the works for a new generation of NPS, some of which may be used in Earth orbit. In this regard, we would cite the plans for the intact, uncontrolled re-entry of NPS under the USA SP100 programme. In cases of re-boost failure, these vehicles would be designed to re-enter intact, with a view to recovering the radioactive fuel on board. However, should the reactor impact with rock on landing or, even worse, with a building, there is expected to be a scattering of radioactive

(Mr. Têtu, Canada)

debris, causing exposure to any humans nearby on a scale substantially higher than 1 mSv per person per year, the goal currently contained in our draft Principle 3. Moreover, even if the space vehicle should avoid rock, it is questionable whether the 1-mSv limit would be met for persons located near the crater caused by the returning spacecraft. We believe we should maintain a clearer picture of the risks, in numerical terms, of such a returning spacecraft hitting rock and the expected amount of radiation exposure to persons located near the point of impact of the returning spacecraft, both for impact with rock or otherwise.

Turning to the work of the Committee, we are very disappointed that despite a spirit of compromise and concession we were not able to reach consensus on all the principles at the last session of the Legal Subcommittee in Geneva, as mandated by General Assembly resolution 46/45. In our view - shared by all delegations but one that have so far spoken to the issue before us - all concerns expressed have been fully addressed by both Subcommittees over the last few years. If we compare the current exercise relating to NPS to the other exercises on which the Committee has embarked over the years, this one has really outlived them all. We also share the concern that the highest scientific standards be met. These standards were debated during the last two years within the Committee and its Subcommittees, and as a result of the debate, the conclusion was reached that agreed principles do not need to be revised, and that in particular Principle 3, which is a key principle, should not be revised. This view is shared, as I mentioned earlier, by all countries but one.

We therefore hope, and we fully expect, that at this session the Committee will be able to conclude these Principles after 13 years of hard work.

Mrs. TYCHUS-LAWSON (Nigeria): Since this is the first time my delegation has spoken here, allow me to express its satisfaction at seeing you, Sir, chairing the work of the Committee. We are confident that with you at the helm, this session will come to a fruitful conclusion. We wish also, through you, to convey our appreciation to Mr. Mikulka of Czechoslovakia for the able manner in which he chaired the last session of the Legal Subcommittee, the report of which is before us in document A/AC.105/514.

The constructive and positive discussions held during the thirty-first session of the Legal Subcommittee did not lead to the adoption of the remaining draft principles on nuclear power sources (NPS), despite the appeal contained in a General Assembly resolution. Since we all attach great importance to the attainment of these principles, we need the understanding of all delegations to adopt them. If each country insists on its own formulation, then agreement will not only be difficult but also impossible. We must move towards constructive compromises that reflect the wishes of all, and in this respect we hope that the remaining draft principles will be adopted at this session.

Concerning the definition and delimitation of outer space and the question of the geostationary orbit, Nigeria's position is well known. We still maintain that the definition and delimitation of outer space can be done in practice and that it is a legal necessity that must be carried out in order to achieve a clear distinction between airspace and outer space. However, my delegation will contribute positively to the discussion of the working paper submitted by the Russian Federation on questions concerning the legal regime on aerospace objects.

On legal aspects related to the exploration and utilization of outer space, my delegation continues to emphasize that the elaboration of the

(Mrs. Tychus-Lawson, Nigeria)

principles regarding international cooperation poses a challenge to the major space Powers to demonstrate by deed their readiness to promote international cooperation in this field. My delegation also wishes to reiterate that the space Powers have a special responsibility to share the advancement of space technology in a manner that is mutually beneficial to all States, and developing nations in particular.

(Mrs. Tychus-Lawson, Nigeria)

Since the establishment of this Committee, space activities for economic and social development have acquired growing importance, and this has necessitated the active involvement of all countries in trying to evolve guidelines and cooperation beneficial to all States, bearing in mind the 1967 outer space Treaty, which embodies the principle that the utilization of outer space should be open to all peoples. It is in this spirit that Nigeria hopes that the exploration and utilization of outer space, which has become a new frontier for human activities, will continue to be carried out for exclusively peaceful purposes. We have every reason to believe that, given current trends in international relations, there is hope for a peaceful universe, especially with the end of the cold war. We should not allow the ever-widening gap between rich and poor nations, as well as the inequitable difference in technological knowledge between them, to become a new threat. This phenomenon should not be allowed to extend into space activities. The developed nations, particularly the space Powers, should harmonize space exploration so as to enable developing countries to acquire technology and to derive related benefits at a cost they can afford.

Mr. PEREZ CREZ (Cuba) (interpretation from Spanish): My delegation wishes to take this opportunity to acknowledge the commendable work being done by the Office for Outer Space Affairs and by the Bureau at this session of the Committee, under your skilful guidance, Mr. Chairman.

Before expressing our views on the issues under discussion on agenda item 8, I should like to point out that the Cuban delegation welcomes the proposal made by the delegation of India that UNISPACE 95 should be held in a third-world country.

(Mr. Perez Crez, Cuba)

Since the last session of the Legal Subcommittee, it has been the view of the Cuban delegation that, in considering the draft principles relevant to the use of nuclear power sources in outer space, we should focus on an analysis of those principles on which we have not yet reached agreement. I believe it is obvious that there is a general consensus among the members of the Committee that the discussion of this issue should be completed as soon as possible. Our country believes that notification of the presence of a nuclear power source on a space object should take place before launching, thus affording some protection to possible recipients in case of accidents during launching and at preliminary stages of the flight. With respect to Principle 4, we believe that safety assessment should take place before each launching and that parameters should be established to be taken into account so that the assessment does not become a quality assessment applicable only to an industrial product. In this respect, it is fundamental that we should emphasize that there is always the possibility of accident.

Another document which was broadly discussed at the last session of the Legal Subcommittee was the one on "Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union". Cuba favours the delimitation of outer space at 100 kilometres above sea level. We favour that delimitation as being above air space, because we believe that this would strengthen the sovereignty of States and avoid the possibility of disputes. We defend the establishment of legal norms guaranteeing equitable access to the geostationary orbit and its rational use, in accordance with existing

(Mr. Perez Crez, Cuba)

space law, which establishes that outer space is free for exploration and utilization by all countries, regardless of their degree of economic and social development.

We believe that there is a need for a legal regime that takes into account the fact that the geostationary orbit is a limited natural resource and that guarantees its rational and equitable use for developing countries so that they will be able to use it once they have acquired the material circumstances to do so.

The International Telecommunication Union is not a substitute for the Committee; rather it complements it, for it is a highly specialized technical body which, among other things, sees to the allotment and registry of frequencies. We consider that the role of the ITU in no way undermines the primary function of the Committee, which includes resolving the political and legal problems relating to the geostationary orbit.

That is why we maintain our position to the effect that the geostationary orbit is a limited natural resource forming an integral part of outer space over which no State or group of States can exercise sovereignty or any other type of special authority. The immense usefulness of the geostationary orbit for communications is unquestionable, but the developing countries have been at a disadvantage with respect to its exploitation, for they lack the necessary capital and technology. Hence this situation must be remedied so as to ensure that all States have equal access to the orbit and that its rational use remains, above all, for the benefit of the developing countries, including equatorial countries.

Mr. GONZALEZ (Chile) (interpretation from Spanish): Rather than making a formal statement, my delegation feels compelled to raise a point at this stage of our discussion.

(Mr. Gonzalez, Chile)

This morning we expressed our agreement with and our satisfaction at the important contribution made on the subject of the geostationary orbit basically by the delegation of Colombia. In this framework as well, at this session we have acknowledged the very important contribution also made by the Chairman of the Working Group, the representative of Argentina, in order to make progress on this item. None the less, we find with some surprise that, in spite of such important efforts, which meant giving up key positions followed very carefully for many years, we are still confronted by what might be termed a stubborn blockade on the part of certain countries with respect to recognizing that the subject of the geostationary orbit requires a special regime.

(Mr. Gonzalez, Chile)

We understand this on political grounds, but there can be no doubt that there are no legal reasons, and I shall not explain why. I shall put it in the form of a question.

We are told that, on the one hand, in accordance with relevant regulations of the International Telecommunication Union (ITU) and others, there can be no appropriation of the geostationary orbit. But we all know that such appropriation does take place. It does occur. It is done in total contradiction and legal incompatibility with article II of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, of 1967, which prohibits any claims of sovereignty over outer space, and in this case over the orbital segment.

At the same time, we are told that it would not be necessary - at another time they used to assure us it was premature - for there to be a definition or delimitation of outer space, despite the fact that we are all aware - and all of us here in this Chamber have the minimum legal expertise to know it - that the Chicago Convention on International Civil Aviation, of 1944 in its article 1 makes it possible to claim sovereignty over airspace. The question is: How far does that airspace extend?

If we deliberately leave this undefined, it will allow those countries - and let there be no mistake about it - with the requisite technological capacity to lay claim to certain strategic segments, such as the geostationary orbit, with the possibility of emplacing satellites there for an indefinite period. This in turn means that the developing countries, until they attain a space capability, will remain on the sidelines, absolutely unable to gain access to such an important strategic resource.

(Mr. Gonzalez, Chile)

Hence, I believe that the time has come, after so many years of deliberations, for things to be absolutely clear. One aspect - the political - which we understand perfectly well, is the real possibility of technologically advanced States - and we do not single out any particular State - to gain access to a vital resource. But the legal aspect is different. I have never - I repeat, never - heard in the past 10 years a legal argument that could make sense of the idea that there is no need to define and delimit outer space.

The definition and delimitation of outer space have clear consequences with regard to the possibility that access over the orbital segment can also be legally claimed by the developing countries. We must not continue to fool ourselves on this point. For the developing countries, the only real means of self-defence is the possibility of a clear legal framework, a frame of reference in which all of us are truly on an equal footing. That equality, as was quite rightly stated at a meeting in 1983 by a representative of Colombia, has to be based on equity - and equity is nothing but unequal treatment for unequals, taking into account an absolutely objective fact: we live in an unequal world.

Taking into account the new international scene, and the fact that we are always being told that we are embarking on a new international order, we wish, on our part, to draw attention to the necessity for this new international order to take fundamentally into account the needs, aspirations and legitimate rights of all countries the world over, as the outer space Treaty says, regardless of their degree of economic, scientific and technical development.

Mrs. FLORES (Uruguay) (interpretation from Spanish): My delegation, like other delegations that spoke earlier, shares the view that it would be appropriate to adopt draft principles relevant to the use of nuclear power

(Mrs. Flores, Uruguay)

sources in outer space, which could serve as a basis for a future convention on this subject.

My delegation is aware of the fact that this subject has already been discussed at length, and we will therefore not dwell on a consideration of the principles. Nevertheless, given the importance of the subject, it would be appropriate in the future for it to be made clear that nuclear power sources in outer space should be restricted to cases in which they are strictly necessary, that is, when substitute sources of energy cannot be used.

It would also be desirable for us to be consistent with existing instruments of space law when we come to defining the launching State, without prejudice to extending responsibility to those States that launch or manufacture space objects with nuclear power sources on board.

One point which, in our opinion, is of extreme importance and which would be highly useful is the future establishment of a technical commission composed of experts on space activities and on the use of nuclear energy, so that, as happens in respect of other activities - the transport of hydrocarbons by sea or the building of thermonuclear plants - it can establish technical norms and guidelines for the use of nuclear power sources in outer space and be entrusted with monitoring their implementation.

This is based on the fact that the use of nuclear power sources in space, in addition to requiring sophisticated technology, can affect an environment that is the common heritage of mankind and has the potential to cause serious damage, and the developing countries that could be harmed do not have the possibility of evaluating or monitoring this type of activity.

Lastly, should the present draft principles be adopted, it would be appropriate to provide for their periodic review at brief intervals.

(Mrs. Flores, Uruguay)

My delegation considers that the delimitation of outer space and airspace is very important, since their respective legal regimes are substantially different. This is less of a technical problem, as we see it, than one of political will.

My delegation continues to uphold its position that the geostationary orbit is a limited, heterogeneous resource located in outer space and therefore the common heritage of mankind. Its exploration and utilization should be carried out in a rational and equitable way of benefit to all members of the international community. In envisaging a special legal regime, particular account must be taken of the needs of the developing countries.

One of the points that should be dealt with, given the importance of the geostationary orbit and its characteristics, is the question of avoiding pollution, especially as regards the question of space debris.

A particularly appropriate opportunity for an exchange of views on these questions will undoubtedly be the forthcoming Conference of the Americas, to be held in Santiago, Chile, in January next year.

ORGANIZATION OF WORK

The CHAIRMAN: There are no further speakers for this afternoon. I would again urge delegations wishing to speak on agenda item 8 to inscribe their names on the speaker's list without further delay, so that we may conclude its consideration as soon as possible and take up agenda item 10.

The meeting rose at 4.10 p.m.